

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

D&Z AUCTION RESELLERS, LLC. AND
GUSTAVO A. MORENO PONCE

Plaintiffs

v.

MEDI DATA CORPORATION,
FARMACIA LA NUEVA BARCELONETA ET
AL.

Defendants

CIVIL NO. 19-1242

COPYRIGHT INFRINGEMENT
VIOLATION OF DIGITAL
MILLENNIUM ACT
COMPUTER FRAUD AND
ABUSE

JURY TRIAL REQUESTED

**OPPOSITION TO MOTION TO DISMISS PURSUANTO
TO FED. R. CIV. P. 12(b)(5)**

TO THE HONORABLE COURT:

COME NOW PLAINTIFFS, through counsel, and respectfully state and pray:

Mrs. Virna L. Martínez has appeared before this Honorable Court requesting the dismissal of the Complaint as to Farmacia Campo Alegre asserting that “Farmacia Campo Alegre” is not a legal entity and only a name through which she does business as an individual. Mrs. Martinez contends that she, thus, had to be served personally and not through an employee, as was done in this case.

When faced with a request for dismissal under Fed. R. Civ. P. 12(b)(5), the Court has broad discretion to dismiss the action or retain the case and quash service of process. *Rivera Otero v. Amgen Mfg. Ltd.*, 317 F.R.D. 326, 329 (D.P.R. 2016). Dismissal for failure to meet service requirements is disfavored where there is a reasonably conceivable

means through which service may be obtained. *Torres v. Junta De Gobierno De Servicio De Emergencia*, 91 F. Supp. 3d 243, 248 (D.P.R. 2015). If the first service is ineffective, and the defects are curable, the Court should treat a motion to dismiss as a motion to quash service of process in the alternative and retain the case pending effective service. *Ramirez De Arellano v. Colloides Naturels Int'l*, 236 F.R.D. 83, 85 n.4 (D.P.R. 2006)

Plaintiffs will not contest Mrs. Martinez's claims that Farmacia Campo Alegre is not a legal entity and that effective service of process is through her. Her motion demonstrates that the defect is curable and that, thus, this Court should treat the motion to dismiss as a motion to quash, and allow plaintiffs to request the issuance of a new summons addressed at her and grant a term upon which to serve process on her.

WHEREFORE, plaintiffs request that the Court treat the motion to dismiss as a motion to quash, and allow the issuance of a new summons addressed at her and grant a term upon which to serve process on her.

RESPECTFULLY SUBMITTED

In San Juan, Puerto Rico, this 16th of September 2019.

I CERTIFY that service a copy of this motion has been served on opposing counsel through the CM/ECF system.

s/ José A. Hernández Mayoral
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